IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 1ST MARCH 2007 / 10TH PHALGUNA 1928

WP(C).No. 12617 of 2006(B)

PETITIONER:

MUHAMMED HAJI,
AGED 42 YEARS,S/O.PADIYATH MANNAPPATT ABDUL KHADER
RESIDING OF EDAVILANGU DESOM,EDAVILANGU
VILLAGE,KODUNGALLUR.

BY ADV. SRI.BABU KARUKAPADATH
SRI.K.A.NOUSHAD

RESPONDENTS:

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1. KODUNGALLUR MUNICIPALITY REPRESENTED
BY THE ITS SECRETARY,
KODUNGALLUR.

2. JAMALUDHDIN THANGAL,
S/O.POOKOYA THANGAL,UDARATHU VALAPPIL,
EDAVILANGU DESOM,EDAVILANGU VILLAGE,
KODUNGALLOOR.

3. U.J.NOUSHAD,
S/O.JAMALUDDIN THANGAL,
UDARATHU VALAPPIL,
EDAVILANGU DESOM,EDAVILANGU VILLAGE,
KODUNGALLOOR.

R1 BY ADV. SRI.M.P.ASHOK KUMAR, SC
R2 & R3 BY ADV.SRI.C.E.UNNIKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

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W.P.(C) No.12617 OF 2006

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DATED THIS THE 1ST MARCH, 2007

J U D G M E N T

The petitioner who is the tenant of the ground floor portion of a commercial building owned by respondents 2 and 3 has filed this Writ Petition impugning Ext.P9 order passed by the Tribunal for Local Self Government Institutions to the extent it directs the Secretary of the 1st respondent-Kodungallur Municipality to inspect the buildings wherein the petitioner is conducting hotel under the name and style 'City Restaurant', along with the Municipal Engineer and to identify the buildings numbered as 7/545-A, B, C and D on the basis of the records pertaining to the assessment of those buildings and the area of the ground floor of the building as stated in the application dated 21.10.1995 for building permit and to initiate proceedings under Section 406 of the Kerala Municipality Act against the writ petitioner and also against respondents 2 and 3 who are owners of the buildings in case any excess construction is noticed, specifying its nature, extent and location and pass a final order under Section 406(3), after rendering them an opportunity of being heard. According to the petitioner, he is the tenant of the entire ground floor of the existing multi-storied building with liability to pay a monthly rent of

Rs.15,000/-. He alleges that at the instance of respondents 2 and 3, the 1st respondent-Municipality issued order for demolishing portions of the tenanted premises including the restaurant, ice-cream parlour, kitchen, store room, cabin and office room without following the procedure contemplated under Section 406 of the Act. Ext.P1 is copy of that order. To Ext.P1, the petitioner submitted Ext.P2 objections. In the meanwhile, the 3rd respondent-landlord filed W.P.(C)No.28864 of 2005 before this Court seeking police protection for demolishing portions of the buildings which according to the petitioner had been included in the lease in his favour. This Court disposed of that Writ Petition clarifying that the parties are entitled to agitate their grievances in appropriate forum. While so, the Municipality issued Ext.P3 order. Challenging Ext.P3, the petitioner filed W.P.(C)No.30061 of 2005. This Court quashed Ext.P3 and directed the 1st respondent to decide the matter within six weeks. On receiving copy of the judgment in that Writ Petition, petitioner submitted Ext.P4 representation before the 1st respondent. Thereafter, the petitioner was called for a hearing. Since he found it difficult to raise effective objections to the proposed demolition without getting certain documents which were in the possession of the Municipality, he filed Ext.P5 representation. It

was requested in Ext.P5 also to adjourn the case to another day. The petitioner alleges that on 17.11.2005, the Secretary of the Municipality made him subscribe his signatures to certain papers as a token of his presence and finally issued an order Ext.P7, without considering any of the objections raised by the petitioner and without granting the documents prayed for by the petitioner. Challenging Ext.P7, the petitioner again approached this Court by filing W.P.(C)No.519 of 2006 and this Court disposed of that Writ Petition by Ext.P8 judgment permitting him to avail statutory remedy of appeal. After Ext.P8 also the Municipality did not supply the petitioner with copies of the documents he had applied for. In terms of the direction of this Court in Ext.P8, the petitioner preferred appeal No.57 of 2006 before the Tribunal for Local Self Government Institutions. The Tribunal has disposed of the appeal by passing Ext.P9. The finding of the Tribunal is that the conclusion of the 1st respondent that the structures directed to be demolished as per Ext.P7 order are unauthorised and illegal was without any basis. The Tribunal, to a certain extent, accepted the case of the petitioner that he was made to sign certain papers by the Secretary of the Municipality on the basis of which Ext.P7 could be passed by the Secretary. The petitioner has also produced Ext.P10

copy of the Government Order exempting construction of basement, ground and first floor of the building from certain provisions of the Kerala Building Rules, 1984. The petitioner is aggrieved by Ext.P9 only to the extent it directs a further ascertainment of the alleged unauthorised structures. Those directions are challenged on various grounds and the petitioner prays that Ext.P9 order to the extent those directions are passed be quashed.

2. The 1st respondent-Municipality and the landlords (respondents 1 and 2) have filed detailed counter affidavits refuting the grounds of challenge against Ext.P9. In fact, the landlords are aggrieved by the interference which the Tribunal made on the demolition order passed by the Secretary. Documents Ext.R2(h) and Ext.R2(k) are put on record by the landlords to show that the petitioner's claim that all the structures which are presently under his possession in which he is conducting ice-cream parlour, restaurant etc. were let out to him by the landlords is incorrect.

3. On going through the pleadings raised, I find that there is serious controversy between the landlords and the tenant as to whether the structures which are shown as objectionable in Ext.R1(b) notice dated 19.5.2006 (which is in fact issued by the Municipality on

the basis of an inspection conducted by them pursuant to the directions in Ext.P9 order) were in existence at the time of lease and also as to who put up those structures and further as to whether it was not with the connivance of the landlords that those constructions were put up. I do not propose to settle those controversies in this Writ Petition. On going through Ext.P9 order I find that the finding therein that those structures are illegal in so far as they have been put up on area which is set apart for parking and in deviation from the plan cannot be said to be faulty. This Court in judicial review does not sit in appeal over the findings entered by the Tribunal whose decision on facts is final under the statutory scheme. I find that in Ext.P9 the Tribunal has marshalled the facts correctly and meticulously and has issued the impugned directions so that illegal constructions shall not be perpetuated. I do not find any warrant for interfering with Ext.P9 even to the extent it relates to the directions which are impugned in this Writ Petition. I have of course allowed W.P.(C)No.17572 of 2005 filed by the Secretary of the Municipality and expunged certain remarks and observations contained in Ext.P9 against him.

4. It is seen that pursuant to Ext.P9, an inspection was conducted by the Municipality on 8.1.2006 and measurements were

taken. The inspection was in the presence of the writ petitioner and respondents 2 and 3. It is pursuant to that inspection, Ext.R1(b) notice was issued by the Municipality to the parties. Under these circumstances, interfering with Ext.P9 will not be justified. I direct the Municipality to permit the petitioner to file objections, if any, to Ext.R1 (b) within two weeks of his receiving copy of this judgment. After objections are received as directed above, the 1st respondent-Municipality will issue fresh hearing notice to the petitioner and also to respondents 2 and 3 and take a decision. Once decision is taken, the writ petitioner and respondents 2 and 3 will be informed of the same. Implementation of the decision shall be made only two weeks after the decision is intimated to the petitioner and respondents 2 and 3.

The Writ Petition is disposed of as above. The parties will bear their respective costs.

(PIUS C. KURIAKOSE, JUDGE)

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